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## PRECEDENTS FOR PRIVATE OWNERSHIP AND GOVERNMENT OPERATION OF TRANSPORTATION FACILITIES

BY DELOS F. WILCOX, PH.D.

### PRIVATE OWNERSHIP AND GOVERNMENT OPERATION IN EUROPE

A report issued by the British Board of Trade in August, 1913, in response to an order of the House of Commons, dated December 14, 1911, is entitled "State Railways (British Possessions and Foreign Countries)." This document gives certain statistics as to the ownership and operation of railways outside of Great Britain as shown by the latest reports then available. The railways are divided into four classes: (1) publicly owned and operated; (2) privately owned but publicly operated; (3) publicly owned but privately operated; (4) privately owned and operated. The total mileage recorded in this report is 594,909. If to this is added the railway mileage of the United Kingdom, the total will be brought up to approximately 650,000 miles, of which about 250,000 miles are in the United States. Classified according to ownership and operation the entire railway mileage of the world at the beginning of the war would be distributed approximately as follows:

Publicly owned and operated, 164,057 miles, or 25.2 per cent

Privately owned but publicly operated, 11,030 miles, or 1.7 per cent

Publicly owned but privately operated, 35,244 miles, or 5.4 per cent

Privately owned and operated, 440,016 miles, or 67.7 per cent

Total, 650,347 miles

It will be seen from these approximate figures that prior to the war only about 11,000 miles, or less than 2 per cent of the railway mileage of the world, was in the peculiar status of being privately owned and publicly operated. The situation has since been radically changed by military exigencies, for the assumption by the governments of Great Britain and the United States of the operation

of their privately owned systems has put about 300,000 miles, or almost one-half of the total mileage of the world, in this class. The available data with respect to pre-war precedents for state operation of privately owned railways are meager. The British report to which I have referred distributes the mileage then in this category as follows:

Austria, 3,593, or 25.5 per cent of its total mileage  
Hungary, 5,771, or 44.7 per cent of its total mileage  
Belgium, 151, or 5.2 per cent of its total mileage  
Denmark, 61, or 2.66 per cent of its total mileage  
France, 229, or .9 per cent of its total mileage  
Norway, 1,225, or 69.9 per cent of its total mileage

It will be noted from the above that the only country in which more than 50 per cent of the railways fell within this category was Norway, and here the preponderance of public operation and private ownership was so great as to make this the characteristic plan for that country. As against 1,225 miles privately owned and publicly operated there were only 396 miles publicly owned and publicly operated and 296 privately owned and privately operated. While Austria and Hungary each showed a considerable mileage privately owned and publicly operated, this arrangement cannot be said to be the characteristic one for either of these countries. Austria had 8,074 miles of publicly owned and operated lines, and 2,409 miles of privately owned and operated lines as compared with the 3,593 miles of privately owned and publicly operated lines. In Hungary there were 5,063 miles publicly owned and operated and 2,058 miles privately owned and operated as compared with 5,771 miles privately owned and publicly operated. In the other countries, Belgium, Denmark and France the proportion privately owned and publicly operated was so small as to be practically insignificant. I have not found a full explanation of the situation in Austria and Hungary, but I take it that the privately owned lines operated by the state were held under lease, and were operated in conjunction with the publicly owned lines just as one railroad corporation frequently incorporates in its own operating system lines leased from other companies. I see nothing in this plan that can properly be regarded as a precedent for the present arrangement in Great Britain and the United States. When we come to an exami-

nation of the situation in Norway we find here also that what on its face appears to be a precedent is not one in fact; for the government of Norway had a preponderant interest in the railways which were classed as privately owned. The total capital invested in these lines was shown to be £10,936,011, which was distributed as follows with respect to the sources from which it was derived:

From the state (shares and loans), £8,413,021, or 76.9 per cent  
From communes and individuals (shares), £1,084,526, or 9.9 per cent  
From outside loans, £273,632, or 2.5 per cent  
From earnings £1,164,832, or 10.7 per cent

These figures show that governmental operation of privately owned lines in Norway was merely public operation of railways which had been heavily subsidized by the government and which were doubtless soon to be exclusively owned by it. This does not furnish a precedent for public operation of privately owned lines in the sense in which this is now being carried on in Great Britain and the United States.

It may be said, therefore, that the working out of a correct policy under the circumstances now prevailing in the United States must be undertaken without much help from direct precedents. The available published information with respect to the experience of Great Britain during the past three years is too meager, and the final results are at the present moment too uncertain to give the American public much satisfactory guidance. No doubt many Americans who, in connection with the work of the war, have had an opportunity to observe and secure knowledge of the practical results of government operation in Great Britain may be in a position to reach conclusions satisfactory to themselves, based upon British experience, and of course it is to be hoped that the United States government, through its intimate relations with the British government during the war, will be able to make advantageous use of the results of England's experiment.

#### STREET RAILWAY PRECEDENTS FOR PRIVATE OWNERSHIP AND GOVERNMENT OPERATION

Before entirely giving up the search for adequate precedents, it may be well to examine the forfeiture provisions of some of the

more recent street railway resettlement franchises and contracts which have been worked out in certain American cities.

The Chicago resettlement ordinances of 1907 set the standard in many respects for "modern" street railway franchises in the United States. The ordinance of the Chicago Railways Company had certain provisions of considerable interest in connection with this discussion. It provided that within three years after its passage the company should perfect its title to the entire street railway system then being operated by the receivers of the Chicago Union Traction Company, and should free this system from any lien or encumbrance other than those created under its express authorization. It further provided for the immediate rehabilitation of the system, and for the distribution of the gross receipts. After operating expenses and taxes had been paid, a sum equivalent to 5 per cent of the fixed purchase price of the street railway system was to be retained by the company, and the net receipts remaining thereafter were to be divided in the proportion of 45 per cent to the company and 55 per cent to the city, the city having the right upon proper notice, at any interval of six months, to purchase and take over the property at a price fixed in the ordinance, plus the cost of additions, extensions and betterments made subsequent to its going into effect. Section 25 of the ordinance established a special remedy in case of the company's default in perfecting its title as required, and provided that in such case the city might take possession of and operate the system upon terms and conditions quoted in the footnote.<sup>1</sup>

<sup>1</sup> If, at any time, the Company shall be in default with respect to the obligation expressed in subdivision (d) of Section 1 of this ordinance in regard to perfecting title to its property and removing liens and encumbrances therefrom, the Company shall, upon demand, surrender to the City possession of its entire street railway system and the City may enter into possession thereof and of each and every part thereof, maintaining, operating, improving or extending the same, and keeping up the funds described in Sections 16 and 18 of this ordinance, in all respects as the Company might do, and as the Company would be obliged to do, if in possession under the provisions of this ordinance, until the obligation of the Company under said subdivision (d) of Section 1 of this ordinance shall be completely performed, or until the City shall purchase said property, or cause the same to be purchased by its licensee, as in this ordinance provided. Until the happening of one of the events last mentioned, if the City in its absolute discretion shall so elect by notice in writing delivered to the Company, the continuance of the Company in possession shall be subject to the obligation of applying its net

It will be noted that the provisions therein quoted relate to a special default. The general provision of the ordinance with respect to default is to the effect that if such default is continued for a period of three months, exclusive of all times during which the company is delayed or interfered with without its connivance by unavoidable accidents, labor strikes, or the orders or judgments of any court entered in any suit brought without its connivance, the city shall be entitled to declare the ordinance and all the rights and privileges of the company to maintain and operate street railways in any of the streets or public ways of the city to be forfeited and at an end. The ordinance stipulates, however, that if the company

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receipts as hereinafter in this Section provided until the City elects to take possession as in this paragraph provided.

If, in the event of such default, the City elects to take possession of said property, the Company shall be bound to provide funds sufficient to fulfill all its obligations in respect of extensions, improvements, reconstruction, equipment, re-equipment, and additions to said system of street railways and the contribution of moneys toward the cost of subways and extensions thereof, as though its possession of said system of street railways had not been interrupted.

Whether in case of such default the City elects to take possession or to leave the Company in possession, in either event the receipts of said system of street railways shall be applied as hereinbefore in this Section provided, except that the proportion of net receipts which by this Section the Company is authorized to retain for its own use and benefit shall be paid over to a depositary as in this Section provided, to be, by such depositary, applied in accordance with the provisions of this ordinance next hereinafter set forth to remove any defect of title or any lien or encumbrance, other than such as are herein expressly authorized to be created, which may exist with respect to said system of street railways.

To the extent that the City shall proceed to exercise the powers, or any of them, mentioned in subdivision (c) of Section 1 of this ordinance, said moneys shall be paid out by the depositary upon the certificate of the Mayor of the City and upon the order of such disbursing officer or agent as the City may designate, to provide funds with which to pay the purchase-price of property acquired by the City pursuant to said subdivision, or to indemnify the City for expenses incurred in the exercise, or attempted exercise, of its powers, as in said subdivision provided. In the event that the City shall elect to leave the Company in possession of said property as aforesaid, the City shall have the additional right to require the depositary, upon like certificate and order, to pay out said moneys for any or all the purposes aforesaid in the absolute discretion of the City, irrespective of the limitations contained in said subdivision (c) of Section 1 of this ordinance. Such certificate of the Mayor shall be conclusive evidence to the depositary of the facts therein stated.

The depositary may also pay out said moneys upon the order of the Company

pledges or mortgages its property or franchises granted by the ordinance for the security of loans maturing not later than the date when the ordinance expires, the amount of such loans not being in excess of the purchase price of the system, the right of forfeiture accruing to the city by reason of the company's violation of the provisions of the ordinance shall not be asserted or exist against the mortgagees and shall not impair or affect their right to recover by legal process against all the property of the company, including the rights granted by this ordinance up to a sum not in excess of the purchase price.

The dual subway contracts executed by the Public Service

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for the acquisition or extinguishment of any outstanding title, estate, interest, lien, encumbrance, claim or demand, constituting a defect of title of the Company's property, but no such payment shall be made on the order of the Company without (20) days' previous notice in writing to the City Comptroller of said City, which notice shall specify the particular title, estate, interest, lien, encumbrance, claim or demand to be acquired or extinguished, and the name of the holder or holders thereof, to whom payment is proposed to be made and the amount of such payment. A certified copy of a resolution of the board of directors of the Company, requesting such payment and stating the facts claimed to justify the same, shall be conclusive evidence to the depositary of the facts so stated, in the absence of notice of objection by the City, as next hereinafter provided. If, within said period of twenty (20) days, the City, by notice in writing delivered to the depositary, shall object to such proposed payment and shall agree to waive any default, or supposed default, by reason of the existence of such alleged title, estate, interest, lien, encumbrance, claim or demand, and to take title or cause its licensee to take title to said system of street railways subject thereto in the event of purchase by the City or its licensee, pursuant to the provisions of this ordinance, then and in that event the depositary shall not make the payment referred to in such notice given to the City by the Company, but shall set apart out of the proportion of the net receipts aforesaid in its hands and shall hold an amount equal to such proposed payment upon the specific trust to pay the same, with all accumulations to the City in either of the following events namely:

(1) If the City shall, at its own expense, cause the said title, estate, interest, lien, encumbrance, claim or demand to be extinguished or conveyed or transferred to the Company.

(2) If the City shall purchase said street railway system, or cause the same to be purchased by its licensee, as in this ordinance provided, and shall take title to said street railway system subject to such outstanding title, estate, interest, lien, encumbrance, claim or demand without deduction from the purchase-price on account thereof.

At the beginning and at the end of any such period during which the Company's right to receive or retain for its own use and benefit a portion of said net receipts

Commission for the First District on behalf of the City of New York, March 19, 1913, provide for the construction and equipment of rapid transit railways by the use of funds furnished in part by the city and in part by the company, and for the lease of these railways when completed, to the Interborough Rapid Transit Company and the New York Municipal Railway Corporation, subject to the city's right, upon the expiration of a period of ten years from the date of the commencement of operation, or at any time thereafter, to terminate the leases and take possession of the property for public operation upon paying the companies the amounts then due them on account of their investment, and the obligations of the contracts. The leases, unless sooner terminated, run for a period of forty-nine years, and the contracts provide that within that time the original contributions to capital made by the companies shall be amortized out of earnings, so that the purchase price of the property, starting at a maximum when the city's right to purchase accrues at the end of ten years, will gradually decrease to nothing (except for the unamortized portions of capital supplied by the companies for equipment in addition to the initial equipment required by the contracts) at the expiration of the leases. These contracts, like the Chicago

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shall have been suspended, as hereinbefore provided, there shall be an accounting in respect of the receipts of said street railway system, to which the depositary shall be a party, substantially as provided in Section 25 of this ordinance with respect to the annual account; and any balance of net receipts in the hands of the depositary not expended as aforesaid, accruing prior to the expiration of such period shall be paid to the City, if the City was in possession during such period, or to the Company, if the Company was in possession during such period, and the Company shall be entitled to receive at the time and subject to the conditions hereinbefore in this Section and Section 18 set forth the share of said net receipts hereinbefore mentioned, accruing after the expiration of such period.

If the City shall enter into possession of said system of street railways, as in this Section provided, it may retain such possession for not more than six months after said title to said system of street railways is perfected as aforesaid and after receiving six months' notice thereof in writing from the Company; and if, while in possession under the authority of this Section, the City shall give notice of its intention to purchase said street railway system of the Company, or to cause the same to be purchased by its licensee at the next succeeding date at which such purchase could be made under this ordinance, the City shall be under no obligation thereafter to surrender such possession by reason of such title having been perfected, unless the City or its licensee shall fail to consummate the purchase at the time specified in such notice.

ordinances, provide for the distribution of the gross receipts, and prescribe the priorities in even greater detail. It is sufficient for our present purposes to state that after previous rental obligations, taxes, operating expenses, maintenance and depreciation have been provided for, the companies are to receive compensation equivalent to their average net profits during a period prior to the date of the contracts, and interest at the rate of 6 per cent per annum upon the new capital supplied by them under the terms of these contracts. As the next deduction from the gross receipts the city is to receive a return upon the portion of the capital which it has contributed to the joint enterprise. Next, a deduction is to be made for the establishment of a contingent reserve fund, and the net amounts remaining after the various deductions described are deemed to be "the income, earnings and profits" of the rapid transit systems, and are to be divided in the proportion of 50 per cent to the companies and 50 per cent to the city.

Our particular interest in these contracts in connection with the present discussion has to do with the remedies provided in case of the default of the companies in paying over the amounts due to the city from the gross receipts, or in case of the failure or neglect of the companies to observe and fulfill the conditions and obligations of the contracts. In such a contingency the city has a choice of remedies, but the one in which we are at present interested is set forth in the Interborough Rapid Transit Company's Contract<sup>2</sup> as follows:

In case of default of the Lessee in paying the rental herein provided or in case of the failure or neglect of the Lessee faithfully to observe, keep and fulfil any of the conditions, obligations and requirements of the Lease, the City, by the Commission upon thirty (30) days' notice to the Lessee of its intentions so to do may serve notice of such default upon the Lessee, directing the Lessee to cure the default within ninety (90) days. If there shall be any dispute as to the fact of default or as to the remedying thereof the Lessee may apply to the Court. If the default be not remedied within such time or within such further time as may be allowed by the Commission or by the court, the City shall thereafter be at liberty to enter upon and as the agent of the Lessee operate the Railroad and Equipment and Existing Railroads and Existing Equipment at the rate of fare and in the manner provided in the Lease for the remainder of the term, or to enter into a contract, subject to the same conditions, with some other person, firm or corporation to operate the Railroad and Equipment and the Existing Railroads and

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<sup>2</sup> Contract No. 3, Article 89.

Existing Equipment as the agent of the Lessee for such period of time as the City may elect. It shall be a condition of such further operation by the City or by the person, firm or corporation with whom or with which the City may contract, that the revenue otherwise distributable to the Lessee under paragraphs 6, 7, 8 and 9 of Article XLIX hereof shall be devoted to the payment of interest and sinking fund charges, if any, upon bonds issued by the Lessee for the purpose of Construction and Equipment under this contract and for the purpose of refunding bonds issued upon the lease of the Existing Railroads and upon the Existing Equipment, and any balance thereof after the payment of such interest and sinking fund charges and after the payment of damages suffered by the City by reason of such default and unpaid by the Lessee from other sources shall be paid to the Lessee. If the City or such other person, firm or corporation shall fail to pay the charges above referred to and if the City shall not terminate this contract as provided in this chapter, the Lessee shall be entitled to regain possession and to resume operation of the Railroad and Equipment and the Existing Railroads and Existing Equipment.

The street railway franchise granted in 1914 by the City of Kansas City, Missouri to the Kansas City Railways Company also contains provisions for the seizure of the street railway system by the city, as a penalty for the company's non-compliance with the terms of the ordinance, and for its operation by the city for the benefit of the parties having a financial interest in it. As an example of the peculiarities of forfeiture where vested rights are involved, the Kansas City ordinance provides an interesting exhibit of the characteristic workings of the American mind. Section 52 of this ordinance is as follows:

If the Company shall willfully do or cause to be done any act or thing by this ordinance prohibited, or willfully fail, refuse or neglect to do any act or thing required by its terms, it shall forfeit all rights and privileges conferred upon it by this ordinance, but such forfeiture shall not affect the right of mortgagees and those claiming under the Company to capital value and return thereon, as herein provided. Such forfeiture may be had by proceedings by the City in its own name or that of the Prosecuting Attorney or Attorney General in the Supreme Court of the State, or if that court declines to assume jurisdiction, in any other court of lawful jurisdiction. *Provided, however,* before the City shall have the right to begin a proceeding to enforce said forfeiture, it shall give notice to the Company in writing of the specific dereliction or derelictions complained of, and unless the Company shall promptly and with expedition fully remove such alleged cause of forfeiture, the City shall have the right to begin and proceed with the enforcement of said forfeiture.

For a second or subsequent breach of the same provision, the City shall have the right to proceed without further notice, to enforce such forfeiture.

If there be a final decree of forfeiture of the Company's rights and privileges hereunder and the cause of forfeiture be not removed within a reasonable time

fixed in the judgment, then the right of the Company to manage and direct the property shall cease and determine and be forever foreclosed, and 25 per cent of that portion of the surplus income of the Company going to it as participation, from date of such final judgment, shall be forfeited to the City and be put back into the property without adding to or in any wise increasing capital value. Either party may appeal from the decree of the court in the first instance, but if the Company so appeals, then pending such appeal its rights of participation in the surplus income shall be suspended and the funds accumulated by reason thereof sequestered, and if it loses upon such appeal, the fund so sequestered shall be forfeited by the Company and paid to the City. Pending such appeal, the property shall be managed by five trustees, two of whom shall be selected by the Company, and three by the Mayor from the City's directors. If there be no appeal by the Company from a judgment of forfeiture, or if there be an appeal by it which results in an affirmance, then the three trustees designated by the Mayor for the City shall manage and direct the property without any representation by the Company, but such trustees for the City shall continue in the exclusive possession of the property, subject to and under the terms of this ordinance, and shall carry out all its obligations with respect to capital value, return thereon, participation of the parties and the rights of all parties as fixed herein, the Company not having thereafter any right to any possession of any part of the property. In case of any vacancy in the office of trustee named by the City, his successor shall be chosen in the same manner as the City Directors are selected, and in case of a vacancy in the office of trustee named by the Company, prior to final judgment of forfeiture, his successor shall be chosen by the Company.

Should the Company be finally adjudged a bankrupt or insolvent and thus be unable to carry out this contract and perform the obligations imposed upon it thereunder, then such adjudication shall have the same force and effect as an adjudication of forfeiture as above provided.

#### PRESENT SIGNIFICANCE OF PRECEDENTS FOR PRIVATE OWNERSHIP AND GOVERNMENT OPERATION

Such are the lame and inadequate precedents which have come to my attention for the public operation of privately owned transportation facilities. Precedents are of no value except as they make it easier to take a desired course of action, or as they throw light upon the ways in which a course of action once taken will or may affect other actions to be taken later on. In the present case the President has acted, and the operation of the railroads has been taken over and placed under the jurisdiction of Secretary McAdoo, acting as Director General of Railroads. A discussion of the question as to whether or not this step was justified from the point of view of precedents would at this time be a purely academic one. Now that the step has been taken, and we are in the midst of a stu-

pendous international struggle, it would be a thankless task to make our discussion hinge upon this issue. The real function of precedents is not, therefore, to furnish us with justification for praising or blaming the President for taking over the railroads, but to point out the probable ultimate effect of this step upon public policies, and to show the ways in which governmental operation and the legislative and contractual arrangements about to be made with respect to it may be best adapted to the furtherance of a sound future policy, and the avoidance of mistakes which might otherwise be made.

Public operation of publicly owned enterprises is a general and normal governmental policy, although there are certain precedents in practice and certain considerations in theory which may be cited in favor of the policy of government ownership and private operation. The value of these precedents and the weight of these considerations we need not discuss at this time. The reverse policy of private ownership with public operation is, as we have seen, without substantial precedent, prior to the beginning of the war, and cannot be regarded as a normal or permanently satisfactory arrangement. It is in both Great Britain and America an emergency policy, the outgrowth of unprecedented conditions, in which national security is in the utmost peril. The question on everybody's lips is: Will the railroads ever be permitted to go back to private control? or, Will public operation inevitably develop into public ownership? Up to the present time the United States has no financial interest in the railroads, that is, it has no share in their ownership. I leave the new government railroad in Alaska out of consideration as that is an isolated enterprise which is in no real sense a part of the system of railroads in the United States. It might be urged that in view of the original land grants made by the government to the transcontinental lines, grants which have now come to represent an enormous value, the government has an interest in the railroad investment. This is not true in any legal or practical sense, for the lands received from the government as a free gift are now as much the property of the railroads as any portion of the equipment provided by their own capital. If the government acquires the railroads it will have to buy back its gifts just the same as if it had not been the giver. In this country there is no financial interest held by the government, and no nucleus of publicly owned lines to fur-

nish the normal foundation for government operation. It seems probable that if the present emergency operation leads to government ownership, the latter will be undertaken on a large scale through the purchase of substantially all of the railroads at once or at least as a part of one big scheme. Whether government ownership will actually follow as a consequence of government operation is a matter that can only be determined in the future. The precedents throw no light upon this issue.

The administration bill now pending in Congress provides that the President may enter into an agreement with any railroad, guaranteeing to it as just compensation for the use of its property during the period of federal control an income at an annual rate equivalent as nearly as may be to its average net railway operating income for the three years ending June 30, 1917, and that any net railway operating income in excess of this standard return to the companies shall be the property of the United States. The bill also provides that adequate depreciation and maintenance of the railroad properties shall be included as a part of operating expenses or provided through a reserve fund, in accordance with principles and rules to be determined by the President. As introduced in Congress the bill provides that federal control of transportation shall continue during the period of the war and until Congress shall thereafter order otherwise. The chief controversy with respect to this legislation is now raging about this provision of the bill; the conservatives—those who are strongly opposed to government ownership and operation as a permanent policy—insisting that a definite time limit shall be fixed in connection with the close of the war, when the railroads shall be handed back to their owners. If the administration bill should become law in its original form, and if it should be determined by the effective voice of the nation that government operation is to be continued as a permanent policy, one of two courses would naturally be chosen. Either the government would continue to operate the roads without buying them, in which case it would have to pay the owners a permanent annual rental as fixed during the war period in accordance with the terms of the act, or the government would determine to purchase them, and then it would have to pay a price largely determined by their earning power as fixed in the same way. If, for example, following the close of the war there should be a great slump in the net earnings of the railroads,

due either to a falling off of gross revenues, or to a relative increase in operating expenses and depreciation charges, the government would be in a position where, if it continued to operate the roads without buying them, it would be bound by contract to pay an excessive rental, or if it concluded to buy them, it would have to pay a price largely determined by the capitalized value of an excessive rental. If, on the other hand the average net earnings during the period immediately following the war should be in excess of the earnings during the war period, the government would reap an advantage by the contracts authorized by the act, whether the roads continued to be operated by the government under private ownership or were to be purchased outright. As the price to be paid for a public utility or any other property almost always has great weight in determining whether or not a purchase will be effected, it is possible that the policy of government ownership and perhaps of continued government operation may, if the administration bill is enacted into law and the contracts authorized by it are consummated, be determined in the affirmative or in the negative, according to the way in which contracts and arrangements entered into in time of war and based upon war conditions work out in time of peace. If it should be found that under these war contracts the government had bound itself to pay an excessive annual rental as a condition of continued government operation, or an excessive purchase price as a condition of the acquisition of the railroads, controlling public opinion might be turned in favor of restoring the railroads to their present owners, and perhaps it would not be unsafe to predict that if the roads should be so restored immediately following the war, their subsequent purchase by the government, or the resumption of government operation, would be long delayed by the extreme financial exigencies arising out of the liquidation of the national war debt.

Precedents are lacking, and for that reason they will have to be made. Sometimes to avoid the "intolerable toil of thought" we copy methods or plans which have been adopted elsewhere, but so recently as not to have been subjected to the test of practical operation. I have referred earlier in this article to the forfeiture and default provisions of the street railway franchise contracts recently adopted in Chicago, New York and Kansas City. These provisions have some relation to each other and might be used to a certain extent as a basis for the determination of the policy to be followed by

the government in the operation of the railroads while they remain in private ownership, but no one of these provisions has ever been subjected to a practical test, and therefore they have no particular weight, except as schemes which have appealed to certain groups of men upon whom was thrust at given times the responsibility for solving difficult problems in public relations. It seems to me that in view of the absence of precedents and in view of the extraordinary conditions now prevailing, it would be a great mistake for the government of the United States by legislation or by authorized contracts to fix the annual compensation to be paid to the railroads for the entire period covered by governmental operation without regard to the financial developments in the railroad business in the years following the war. In my judgment it would be better to limit the compensation features of the present arrangement to a definite period, say, until the end of one or two years following the cessation of hostilities, leaving for subsequent readjustment a determination of the earning power of the roads under the conditions prevailing after the war.